IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

OP.No. 13804 of 2003(R)

PETITIONER:

HEERA CONSTRUCTION COMPANY PVT. LTD.,
HEERA PARK, M.P. APPAN ROAD, TRIVANDRUM-14,
REPRESENTED BY THE MANAGING DIRECTOR.

BY ADV. SRI.HARUN-AL-RASHID

RESPONDENTS:

TAHSILDAR, KOLLAM.

BY GOVT PLEADER SRI.MATHEW GEORGE VADAKKEL

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 03/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.23328 OF 2003 IN OP NO.13804 OF 2003 R

//DISMISSED//

03.07.2007. SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.

APPENDIX

PETIITONER'S EXHIBITS:

EXT.P1: TRUE COPY OF NOTICE DTD.26.5.2001 ISSUED BY RESPONDENT TO THE PETITIONER.

EXT.P2: TRUE COPY OF REPLY DTD.29.6.2001 SENT BY PETITIONER TO THE RESPONDENT.

EXT.P3: TRUE COPY OF COMMUNICATION DT.25.3.2002 SENT BY RESPONDENT TO THE PETITIONER.

EXT.P4: TRUE COPYOF REPLY DTD.1.4.2002 SENT TO THE RESPONDENT BY PETITIONER.

EXT.P5: TRUE COPY OF REPRESENTAITON DATED 11.5.2002 SENT BY PETITIONER TO THE RESPONDENT.

EXT.P6: TRUE COPY OF ASSESSMENT ORDER DATED 11.11.2002 ISSUED BY RESPONDENT TO THE PETITIONER.

EXT.P7: TRUE COPYOF NOTICE DATED 11.11.2002 ISSUED BY RESPONDENT TO THE PETITIONER.

EXT.P8: TRUE COPY OF REPRESENTAITON DATED 7.2.2003 SENT BY PETITIONR TO THE RESPONDENT.

/TRUE COPY/

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.13804 OF 2003

Dated this the 3rd day of July, 2007

JUDGMENT

The petitioner contends that it is only a builder, in the sense, a building contractor, and that the building cannot be assessed in its name because the nature of the transactions, on the basis of which the construction in question is carried out, is whereby different persons acquire collective interest in the title to the land and enter into agreement with the petitioner-builder to build, thereby, the intending occupant, who is the owner, will be contributing to the expenditure for construction. These are the essential ingredients for assessing different apartments in a composite building, separately, for the purpose of the Kerala Building Tax Act, 1975. But the contention of the respondents in the counter affidavit is that on the basis of the sketchy details that were given by the petitioner, they issued notices to the persons who were said to be the vendees and the only one among them, who responded, stated that he had not contributed any amount for construction, though he had taken a sale in his

name. On the basis of the said disputed facts, I do not think it is appropriate for a writ court to venture into an adjudication, particularly when the petitioner had not even exhausted the statutory remedies available to him, before moving this Court.

2. It is also urged by the learned counsel for the petitioner that the assessment of the entire structure is premature in the sense many of the proposed apartments have not even been constructed to be called a building for the purpose of the Act.

3. By order dated 16.5.2003 on C.M.P.No.23328/03, this Court had directed stay of recovery of tax under the impugned demand on condition that the petitioner deposits an amount of Rupees One Lakh within 15 days from then. If such amount was actually deposited and if the petitioner remits a further amount of Rupees One Lakh within a period of one month from today, the appellate authority, if moved within a period of 45 days from now, will consider the petitioner's appeal against the impugned assessment and decide the issues, including as to whether the

entire building could be treated as completed building for the purpose of assessment under the KBT Act and whether the petitioner has shown materials to conclude that the apartments are to be treated as separate buildings applying explanation 2 to Section (2)(e) of the KBT Act, 1975. A final decision shall be taken within a period of four months from the date of receipt of a copy of this judgment. The amounts deposited by the petitioner in view of the interim order and the amount to be deposited as directed above, will be dealt with in accordance with such decision in the appeal.

The writ petition is disposed of with the above directions.

Sd/-

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

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JUDGMENT

3RD JULY, 2007.

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